

**THIS DECISION HAS BEEN APPEALED. THE FOLLOWING
IS THE RELATED SOAH DECISION NUMBER:**

SOAH DOCKET NO. 453-05-4279.M5

MDR Tracking Number: M5-05-0590-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 titled Medical Dispute Resolution of a Medical Fee Dispute, and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The disputed dates of service 10-14-03 through 10-17-03 are untimely and ineligible for review per TWCC Rule 133.308 (e)(1) which states that a request for medical dispute resolution shall be considered timely if it is received by the Commission no later than one year after the dates of service in dispute. This dispute was received on 10-20-04.

The IRO reviewed work hardening program and FCE on 10-20-03 to 11-21-03.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the majority of the medical necessity issues. The IRO deemed the work hardening program and FCE from 10-20-03 to 10-28-03 was medically necessary. The IRO agreed with the previous adverse determination that the work hardening program from 11-3-03 to 11-21-03 was not medically necessary. Consequently, the requestor is not owed a refund of the paid IRO fee.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO Decision.

ORDER

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the Respondent to pay the unpaid medical fees outlined above as follows:

- In accordance with TWCC reimbursement methodologies for Return to Work Rehabilitation Programs for dates of service on or after August 1, 2003 per Commission Rule 134.202(e)(5) plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this Order.

This Order is applicable to dates of service 10-20-03 through 10-28-03 as outlined above.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is hereby issued this 26th day of January 2005.

Dee Z. Torres
Medical Dispute Resolution Officer
Medical Review Division
Enclosure: IRO Decision



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NOTICE OF INDEPENDENT REVIEW DECISION

Date: December 10, 2004

To the Attention Of:

TWCC
7551 Metro Center Drive, Suite 100, MS-48
Austin, TX 78744-16091

RE: Injured Worker:

MDR Tracking #: M5-05-0590-01

IRO Certificate #: 5242

Forté has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to Forté for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

Forté has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

Submitted by Requester:

- Letter from provider to IRO physician
- Request of peer review reconsideration
- Work hardening notes
- Treatment plans
- Multiple FCE reports
- Exercise plans
- Psychological notes

Submitted by Respondent:

- FCE reports
- NCV reports
- Peer reviews
- Daily notes
- Work hardening notes
- Designated doctor report
- MRI report
- TWCC-73 forms

Clinical History

According to the supplied documentation, it appears the claimant sustained an injury to his lumbar spine on ____ when he was lifting an electric motor that weighed approximately 50 pounds. The claimant was initially seen 28 days later by Dr. Barrera who prescribed medications and physical therapy. After a few months the patient was seen by Dr. Tijerina who recommended surgery. The documentation supported that the claimant did not want surgery. The claimant was later seen by a Dr. Ken Williams who recommended epidural steroid injections to the lumbar spine. The claimant also refused epidural steroid injections. The claimant was later seen by Robert B. Fraser, D.C. who began an active therapy program. On 9/29/03, the claimant began a work hardening program under Dr. Fraser which lasted approximately eight weeks. The documentation continues beyond this date, but was not necessary for review because it was not in dispute.

Requested Service(s)

97545, 97546 Work hardening program and 97750 FCE for services rendered 10/20/03-11/21/03.

Decision

I disagree with the insurance company and agree with the treating provider that the services rendered between 10/20/03-10/28/03 were reasonable and necessary to treat the compensable injury.

I agree with the insurance company that the treatment rendered from 10/29/03-11/21/03 was not medically necessary.

Rationale/Basis for Decision

According to the supplied documentation, it appears that the claimant was given several alternative treatment options, including surgery as well as lumbar epidural steroid injections which he refused. Since the amount of therapy and treatment was drastically reduced after the claimant refused any surgical intervention, a short term trial of work hardening would be considered reasonable. Four weeks of work hardening which would have begun on 9/29/03 and lasted through 10/28/03 is seen as reasonable and medically necessary to treat the compensable injury. The FCE dated 10/28/03 is also seen as reasonable. The claimant initially was at a light-medium capacity and the claimant's original job capacity was at a medium level. It would seem reasonable that a period of

four weeks of work hardening would be enough to advance the claimant from light-medium to medium physical capacity. At that time it would be necessary to transition the claimant to a home based exercise program in which the claimant could return to work as well as continue to improve his symptoms and physical capacity without any possibility of a doctor induced dependence. Ongoing work hardening programs beyond the initial four weeks is not seen as reasonable or medically necessary to treat the compensable injury in this case.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to TWCC via facsimile or U.S. Postal Service from the office of the IRO on this 10th day of December 2004.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder